

paragraph [0027]. Finally, claims 18 and 19 are supported at least in paragraph [0026]. No new matter has been added by these amendments.

In Paper No. 7, the Examiner notes that the application number of the priority document which was filed with the application and the application number of the document cited in the Declaration are different (German Patent Applications Nos. 19935083.5 and 19935083.3, respectively), and requests a new executed Declaration with the correct application number. Applicants respectfully traverse this requirement, because the only difference between the two application numbers is in the sole digit after the decimal point, which the German Patent Office uses as a “check digit” and not as an essential identifier of the priority document. Accordingly, the priority document is correctly and appropriately identified as “19935083” on both the priority document as filed and on the Declaration. It is thus submitted that Applicants have fulfilled the requirements for claiming foreign priority.

The Examiner has objected to the specification, arguing that the trademark “Optigel® WX” at page 5; line 7, should be capitalized and accompanied by the generic terminology. Applicants respectfully traverse this objection, as “Optigel” is indeed capitalized in the specification and accompanied by the correct trademark symbol “®” in accordance with MPEP § 608.01(v). Optigel® is also generically described as “an organic-modified silicate.” Accordingly, reconsideration and withdrawal of the objection are respectfully requested.

Rejection Under 35 U.S.C. § 112, Second Paragraph

The Examiner has formally rejected claims 1-11 under 35 U.S.C. § 112, second paragraph, as being indefinite in several respects. Regarding claim 1, the Examiner argues that the phrase “pH value of less than about 6” is indefinite, since it is not clear what is encompassed by “less than about.” The Examiner further argues that the phrases “at least about 20%” in claim

2 and “not more than about” in claims 4 and 5 are indefinite because one of ordinary skill in the art would not be able to understand the metes and bounds of “about.” The Examiner also contends that in claim 3, the phrase “substantially entirely organic material” is indefinite because it is not clear what percentage of the abrasive would be encompassed by such a phrase. Finally, the Examiner contends that the phrase “predominantly present as particles in a size range of...” in claims 8 and 9 is vague and indefinite, since it is not clear what percentage of the particles are intended to fall within such a phrase. Applicants respectfully traverse the formal rejections as follows.

It has been held that the term “about” is sufficiently definite as to be interpretable by one of ordinary skill in the art. The scope of the interpretation depends on the technological scope of the context of use and the precision or significance of the measurements used, and should be interpreted as would be viewed by persons experienced in the field and technology of the invention and the particular circumstances. (See, for example, *Modine Mfg. Co. v. U.S. International Trade Commission*, 75 F.3d 1545, 1557, 37 USPQ2d 1609, 1617 (Fed. Cir. 1996), *Chemical Separation Technology Inc. v. United States*, 63 USPQ 2d 1114 (US Ct. Fed Cls 2002)). In the latter case, the term “about” was specifically held to be definite when applied to pH values. Accordingly, one of ordinary skill in the art would clearly understand, for example, what is meant by a pH “less than about 6” and also what content of abrasive material would fall within “not more than about 10%.” It is noted that Applicants have not used any significant figures after the decimal point, but have used whole numbers, so that one skilled in the art will readily recognize that the exact value is not critical but encompasses a range around that value.

Regarding the phrase “substantially entirely organic material” recited in claim 3, the term “substantially” has also been held by the courts to be definite (MPEP § 2173.05(b)). In

the present context, since claim 2 recites that the abrasive agent comprises “at least about 20% by weight organic material,” one having ordinary skill in the art would clearly understand that “substantially entirely” would mean far greater than “at least about 20%,” and more particularly, “nearly all” or “nearly completely” organic material.

Finally, claims 8 and 9 recite the phrase “the organic material is predominantly present as particles in a size range of...,” which the Examiner argues is indefinite. Applicants respectfully traverse this rejection, because it would be understood by one having ordinary skill in the art at the time of the invention that particulate materials are typically graded according to an average or mean particle size distribution. It is difficult, if not technically impossible, for a manufacturer to ensure that there is a definite “cut-off” of particles above or below a certain size limit. Therefore, one specifying, e.g., a 600 micron material, would not realistically expect to receive a material from a supplier which is solely composed of 600 micron sized particles, but rather would likely receive a relatively narrow particle size distribution about an average size of 600 microns which contains some particles greater than 600 um and some particles less than this average particle size. However, it would be expected that the particle size would be “predominantly” 600 microns. Similarly, where a range is recited, as in claims 8 and 9, one skilled in the art will understand that the particle size will be predominantly or to a large extent within that range. Accordingly, one of ordinary skill in the art would understand that the phrase “predominantly present,” when used to describe particle size, is not indefinite, but rather describes the reality of particulate materials.

For all of these reasons, Applicants respectfully submit that all of claims 1-11 are definite and in compliance with § 112. Reconsideration and withdrawal of the rejections are respectfully requested.

Rejection Under 35 U.S.C. § 102(b) Based on Massaux

In Paper No. 7, the Examiner has also rejected claims 1-11 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,849,105 of Massaux *et al.* ("Massaux"). The Examiner argues that Massaux discloses a liquid crystal composition for cleaning hard surfaces, such as vitreous, wash bowls, bathtubs, and tiling, by applying the composition to the hard surface. The composition allegedly comprises 1-20% of a cosurfactant, 1-30% of a magnesium salt of an alkyl benzene sulfonate surfactant, 1-20% by weight of an ethoxylated nonionic surfactant, 1-20% by weight of an ethoxylated nonionic surfactant, 0.1-2.5% by weight of an unsaturated fatty acid, 0.2-6% by weight of a perfume and 0.1-10% by weight of an abrasive. Further, Massaux allegedly teaches that the abrasive material is selected from the group consisting of amorphous hydrated silica (i.e., a mineral particulate), polyethylene powder particles, and mixtures thereof, and that the pH of the liquid crystal formulations is 2.5-5.0. Finally, the Examiner argues that the polyethylene powder has a particle size of 200 μm , and that Massaux thus anticipates all of claims 1-11. Applicants respectfully traverse this rejection as follows.

The present invention is directed to a cleaner for glass-ceramic surfaces. As explained in the specification in paragraph [0004], glass ceramic materials are polycrystalline solids made by the ceramification, i.e., controlled devitrification, of glasses. Further, as described in *Dictionary of Science and Technology* (Christopher Morris, Ed., Academic Press, 1992), such materials are "predominantly crystalline products created by the controlled crystallization of glass; characterized by high thermal shock resistance and low thermal expansion." Glass-ceramic materials are formed by adding a nucleating agent, such as titania, to

a standard glass, melting, rolling into a sheet, cooling, and then heating to the nucleation temperature to cause crystal formation. Glass-ceramic materials are often used in ranges and stove tops, for example. (See, for example, *Condensed Chemical Dictionary* (Gessner Hawley, Ed., 10th Ed. Van Nostrand Reinhold Company, 1981)).

In contrast, the liquid crystal compositions of Massaux are designed for cleaning hard surfaces, including plastic, vitreous, and metal surfaces (col. 4, lines 19-22), such as dishes, walls, and floors (col. 10:20-23). The term “vitreous” refers to a material which has the appearance, properties, and characteristic of glass: hard, amorphous, and brittle (*Condensed Chemical Dictionary*). However, Massaux does not teach or suggest that the cleaner would be appropriate for glass-ceramic surfaces as claimed, and therefore does not teach or suggest all of the claimed elements.

Further, claim 2 recites that the abrasive agent comprises at least about 20% organic material, which is also not taught or suggested by Massaux. Rather, Massaux teaches that the abrasive in the liquid crystal composition is selected from the group consisting of amorphous hydrated silica, polyethylene powder particles, and mixtures thereof (col. 9, lines 1-3). Another preferred abrasive is calcite (limestone) (col. 9, lines 18-24). In the claims of Massaux and in all of the examples, amorphous silica is used as the abrasive in the composition. There is no requirement that polyethylene particles be included in the abrasive, which could contain solely inorganic material (silica and/or calcite). There is further no suggestion that the abrasive contains at least 20% organic material as claimed. Therefore, Massaux does not anticipate claim 2.

For all of these reasons, Applicants respectfully submit that Massaux does not teach or suggest all of the elements of claims 1-11, and reconsideration and withdrawal of the § 102(b) rejection are respectfully requested.

Based on the above remarks, it is respectfully submitted that all of the pending claims are in compliance with § 112, patentable, distinct from the prior art of record, and in condition for allowance. A Notice of Allowance is respectfully requested.

Respectfully submitted,

MARION HACKENTHAL, *et al.*

January 30, 2003
(Date)

By:

Sandra M. Katz
SANDRA M. KATZ

Registration No. 51,864

AKIN GUMP STRAUSS HAUER & FELD LLP

One Commerce Square

2005 Market Street, Suite 2200

Philadelphia, PA 19103-7013

Telephone: 215-965-1200

Direct Dial: 215-965-1344

Facsimile: 215-965-1210

E-Mail: skatz@akingump.com

WWS/SMK:smk